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CBOCS West, Inc. v. Humphries

Opinion Announcement - May 27, 2008

Stephen G. Breyer

A long standing civil rights law, 42 U.S.C. Section 1981, first enacted after the Civil War, provides, "All persons within the jurisdiction of the United States shall have the same right in every State and territory to make and enforce contracts as is -- as is enjoyed by white citizens."

The question in this case is whether that provision I just read, encompasses a complaint of retaliation against a person, say a white person, who himself has complained about contract related discrimination against another person, say a black person, kind of -- he's a kind of whistle blower.

The Seventh Circuit held that the statute did protect against this form of retaliation and the petitioner here challenges that conclusion.

The petitioner argues that the Circuit is wrong.

It says that a white man, though retaliated against, is not being discriminated against because of his or her race.

It adds that the statute simply assures each person the same right to make contracts that is, in the statutes' words, enjoyed by white citizens.

A white person enjoys that right.

He acts as nothing more and the act consequently does not protect those who speak up about or act against the racial discrimination that it forbids.

Now, we reject this argument and we affirm the Court of Appeals.

We rest our conclusion primarily upon principles of stare decisis, principles that warn us against departing from a well-established prior interpretation of the law.

And there is that interpretation in all the arguments against the argument I just gave are in all those cases.

In 1969 in Sullivan v. Little Hunting Park, the Court found that Sullivan, a white man, did have standing to maintain a suit against a property association that punished him when he protested its discriminatory treatment against a black

man.

Sullivan concerned a sister statute involving property rights rather than contract rights which are now before us, but in a later case, Jackson v. Birmingham, the Court made clear that Sullivan stood for the proposition that that property statute prohibited retaliation against those who advocate the rights of groups whom the statute protects and the long line of our precedence then treats the statute now before us and the statue in the Sullivan, the contract and the property statute, similarly because they are sister statutes, as they said they have similar language, common history, and shared anti-discrimination purposes.

We have to concede that in a still later case, Patterson versus McLean Credit Union, this Court narrowed the interpretation of Section 1981, narrowed it in -- in contrast with the broader interpretation that many lower courts had previously followed and in Patterson, the Court set forth an interpretation that in practice would have ruled out many retaliation claims.

The Congress later responded with amendments to Section 1981 and those amendments sought to broaden the statute's scope.

In our view, Congress intended those amendments in the language of the reports of the – on the bill to restore rights to sue for retaliatory conduct.

In a word, the history of the statute, which we consider at greater length in our opinion, convinces us that an interpretation of Section 1981 as offering protection against retaliation has been the law for some time.

For reasons we also set forth, we do not find in the petitioner's argument sufficient basis for departing from prior interpretations.

So we affirm the Seventh Circuit.

Justice Thomas has filed a dissenting opinion which Justice Scalia has joined.